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CIRCUIT COURT OF THE CITY OF RICHMOND.

ESTELLE V. PLUNKETT V. SUPREME CONCLAVE, IMPROVED ORDER
HEPTASOPHS.*

June 27, 1904.

1. SUICIDE—*Definition*. At common law, a suicide is one who, being of years of discretion and sound mind, destroys himself.
2. SUICIDE—*Presumption of sanity*. In a case of suicide, there is a presumption of sanity and not of insanity.
3. SUICIDE—*Ageement to comply with rules and regulations of beneficiary order—Change of by-laws—Vested rights—Implied contract*. If a person, in becoming a member of a beneficial order, agrees to comply with all the laws, rules and regulations, then governing the order, or that may be enacted in the future, a subsequent by-law, providing for a forfeiture of contract rights in the event of suicide while *sane*, will be valid as to him—first, because it invades no vested rights of his, and secondly, because it is a fundamental, though unexpressed, part of the original contract that he will not intentionally cause his own death. *Quære*, as to suicide if insane.

Upon demurrer by plaintiff to two special pleas filed by the defendant.

Sands & Sands, for plaintiff.

Olin Bryan, Henry Flegenheimer and Melvin Flegenheimer, for defendant.

HON. R. CARTER SCOTT, Judge.

It appears from the record that Charles W. Plunkett applied for membership in the Improved Order Heptasophs on June 28, 1897, and in his application he agreed "to conform in all respects to the laws, rules, and usages of the order now in force or which may hereafter be adopted by the same." Upon said application he was admitted as a member, and, on the 12th day of August, 1897, a benefit certificate for the sum of two thousand dollars (\$2,000) was issued him, his wife, Estelle V. Plunkett, beneficiary. This certificate was delivered and accepted "upon the condition that the said brother herein complies with the laws, rules, and regulations now governing said conclave and benefit fund, or that may, in the future, be enacted by the Supreme Conclave to govern said conclave and fund." At the time Plunkett applied

*Reported by George C. Gregory.

for membership and at the time the benefit certificate was delivered to him, there was no by-law of the company in regard to suicide. At the session of the Supreme Conclave, held in June, 1903, section known as 257 of constitution and by-laws was enacted. This section provides as follows: "No benefit shall be paid to the beneficiary or beneficiaries of any member committing suicide (sane or insane), provided, however, that where such suicide has completed one year of membership (although the Supreme Conclave shall by this act be released from all claims represented by the benefit certificate) his beneficiary or beneficiaries shall, nevertheless, receive from the Supreme Conclave a sum of money in full discharge of all demands which he, she, or they might otherwise have had upon said Supreme Conclave equal to the equitable proportion of the total benefit; such equity to be determined by the number of years the suicide was a member of the order as related to his expectancy of life when admitted." This by-law was in force on the 9th day of August, 1903, upon which day Charles W. Plunkett committed suicide and died from the effects of a pistol shot wound inflicted by himself with suicidal intent. The beneficiary upon proper proofs of death made a demand for the face value of the benefit certificate, to wit, the sum of two thousand dollars. The demand was refused, and thereupon she brought her action. The defendant tendered two special pleas. The first alleged that in the application and also in the benefit certificate that Charles W. Plunkett promised to conform in all respects to the laws, etc., in force at the time of said application and benefit certificate and those thereafter to be adopted, and that section 257 had been thereafter adopted and that the said Plunkett committed suicide and died from the effects of a pistol wound inflicted by himself with suicidal intent. The second plea set forth the above facts and in addition thereto, that in accordance with section 257 the defendant was indebted to the plaintiff in the sum of \$333.34, and that on the day when the said sum became due, the defendant tendered the plaintiff said sum, and that the plaintiff wholly refused to accept, and that the defendant has ever been and still is ready to pay the said plaintiff the said sum, which the defendant brought and paid into court. To both of these pleas the plaintiff demurred. It was contended in support of said demurrer that the by-law interfered

with rights which had become fixed and vested by the terms of the original contract.

The demurrer admits that its enactment was regular and in accordance with the provisions of the defendant's constitution, and by the express terms of the contract between the plaintiff's husband and the defendant, the former agreed to comply "with all the laws, rules, and regulations now governing said conclave and benefit fund or that in the future may be enacted by the Supreme Conclave to govern the said conclave and fund." Therefore, the by-laws regularly adopted by the defendant became retrospective as well as prospective in their operations, except as to the rights which had become fixed and vested by the terms of the original contract. In the original contract there was no mention of death by self-destruction or suicide of a member, whether sane or insane. The demurrers to the pleas also admit that the plaintiff's husband was a suicide, and the meaning of the word suicide is, as defined by the Century Dictionary, "One who commits suicide; at common law, one who being of years of discretion and sound mind destroys himself, and the act itself is defined by designedly destroying one's life." "To constitute suicide at common law the person must be of years of discretion and of sound mind." But in addition to this definition there is a presumption of sanity which must be entertained in the absence of proof. Insanity cannot be predicated simply upon the act of self-destruction, for human experience has shown that sane men have taken their own lives. To the extent that the by-law provides for the forfeiture of contract rights in the event of suicide by the insured while he was sane, it is valid; first because it invades no vested rights of the insured, and second because it is a fundamental, though unexpressed part, of the original contract that the insured should not intentionally cause his own death. Inasmuch as the original contract and by-laws were silent upon the subject of suicide by the insured while sane, the new by-law is valid because there can be no such thing as a vested right for a sane man to commit suicide, and for the further reason that it is nothing more than the written expression of the provision which the law had read into the contract at its inception. Therefore, inasmuch as the demurrer admits that the plaintiff's husband was sane at the time of the commission of the suicide, the court is of the opinion that there can be no recovery except in accordance with the terms

of the by-laws of the association; and, therefore, the court sustains the demurrer to plea No. 1, and overrules the demurrer to plea No. 2, and will enter an order that the sum of \$333.34 be paid to the plaintiff in this case, and that the plaintiff shall pay the costs of this proceeding.

In this case it is not necessary to express an opinion as to whether or not the by-law in question is binding upon those members who afterwards became insane and committed suicide, and as to such persons no opinion is expressed. There is eminent authority to the effect that such a by-law is not binding on them. *Weber v. Supreme Tent K. of M.*, 172, N. Y. 490; *Sarah Shipman v. Protected Home Circle*, 174, N. Y. 398, 63 L. R. A. 847. And much authority to the contrary. *Supreme Council v. Ainsworth*, 71 Ala. 436; *S. L. K. of P. v. LaMalta*, 95 Tenn. 157; *S. L. K. of P. v. Knutsher*, 72 Ill. App. 462; *Daughtry v. K. of P.*, 48 La. Ann. 1203; *Hughes v. Wis. etc. Inc. Co.*, 98 Wis. 292; *Sovereign Camp v. Frailey (Tex.)*, 59 S. W. 879; *Dornes v. S. L.*, 75 Miss. 466; *S. Lodge v. Sirby*, 75 Miss. 107; *Bednis v. Grand Lodge*, 99 Cal. 392, 34 Pac. 170.